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Attorneys for Defendants
VXN GROUP LLC; STRIKE 3 HOLDINGS, LLC;
GENERAL MEDIA SYSTEMS, LLC; and
MIKE MILLER

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

MACKENZIE ANNE THOMA,
a.k.a. KENZIE ANNE, an
individual and on behalf of all
others similarly situated,

Plaintiff,

v.

VXN GROUP LLC, a Delaware
limited liability company; STRIKE
3 HOLDINGS, LLC, a Delaware
limited liability company;
GENERAL MEDIA SYSTEMS,
LLC, a Delaware limited liability
company; MIKE MILLER, an
individual; and DOES 1 to 100,
inclusive,

Defendants.

Case No. **2:23-cv-04901 WLH (AGR_x)**

**DECLARATION OF BRAD S. KANE
IN SUPPORT OF DEFENDANTS'
MOTION TO DISMISS PLAINTIFF'S
SECOND AMENDED COMPLAINT**

Date: April 26, 2024
Time: 1:30 pm or later
Courtroom: 9B

*[Filed concurrently with Defendants'
Notice of Motion and Motion to Dismiss
Plaintiff's Second Amended Complaint;
[Proposed] Order]*

Complaint Filed: April 20, 2023
Removed: June 21, 2023

**DECLARATION OF BRAD S. KANE IN SUPPORT OF DEFENDANTS'
REPLY RE: MOTION TO DISMISS PLAINTIFF'S SAC**

1 I, Brad S. Kane, hereby declare as follows:

2 1. I am an attorney licensed to practice law in the State of California
3 since 1990, the State of Alaska since 1991 and Washington State since 2003. I am
4 the owner of the Kane Law Firm (“KLF”), and counsel for Defendants VXN Group
5 LLC (“VXN”), Strike 3 Holdings, LLC (“Strike 3”), General Media Systems, LLC
6 (“General Media”), and Mike Miller (“Miller”) (collectively, “Defendants”). I am
7 personally familiar with, and, if called upon, could and would testify to the facts
8 contained herein from my personal knowledge.

9 2. I have read Sarah Cohen (“Cohen”)’s April 5, 2024 Declaration (Dkt.
10 57-1). She makes a *false* factual representation to the Court that “Defendants did
11 not attempt to meet and confer until March 20, 2024.” (Dkt. 57-1, at 2:12)

12 3. Attached as **Exhibit 3** is a true and copy of the March 4, 5, and 6, 2024
13 email exchanged between Defendants’ counsel and Plaintiff’s counsel with the
14 subject heading, “Thoma v. VXN et al, - Meet and Confer on Plaintiff’s Second
15 Amended Complaint”. On March 4 and 5, 2024, Defendants’ counsel requested a
16 pre-filing meet and confer on the Second Amended Complaint. On March 6, Cohen
17 suggested holding the meet and confer on March 7, 2024 “between 10 am-2pm.”

18 4. On March 7, 2024, pursuant to Local Rule 7-3, I and my senior
19 associate, Eric Clopper (“Clopper”), thoroughly met and conferred with Plaintiff’s
20 counsel Sarah Cohen (“Cohen”) and Rafael Yedoyan (“Yedoyan”) regarding the
21 new allegations in Plaintiff’s SAC and the grounds upon which Defendants would
22 move to dismiss them.

23 5. During our March 7, 2024 meet and confer, the parties discussed at
24 length Plaintiff’s anticipated new allegations in the SAC based on: (i) the Court’s
25 February 16, 2024 ruling; and (ii) issues successfully raised in Defendants’ Motion
26 to Dismiss Plaintiff’s First Amended Complaint.

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6. Also during our March 7, 2024 meet and confer, both sides discussed the outstanding pleading issues to be resolved by this Court, including: (i) Plaintiff's alter ego allegations; (ii) Plaintiff's failure to meet the *Landers* standard to state a minimum wage claim; (iii) Plaintiff's new claim that she never received wage statements, which directly contradict allegations in both the Complaint and the FAC; and (iv) Plaintiff's failure to plead one example when Defendants refused to provide a necessary work-related reimbursement pursuant to this Court's order dismissing the FAC. Clopper and I were unable to reach any agreements with Cohen and Yedoyan during this meeting.

7. On March 20, 2024, Clopper emailed Cohen and Yedoyan to try and meet and confer once more prior to Defendants filing this motion.

8. On Monday, April 1, 2024, or eleven (11) days later, Cohen *apologized for overlooking the March 20, 2024 email*. [Dkt. 57-3 at 2]

9. On April 3, 2024, Defendants had a *second* meet and confer. Defendants reiterated the same concerns discussed on March 7, 2024 and offered to allow Plaintiff to amend her SAC to avoid filing an opposition and requiring the Court to decide this Motion. Plaintiff declined that offer.

I declare under penalty of perjury that the foregoing is true and correct. Executed on April 12, 2024 at Los Angeles, California.

/s/ Brad S. Kane

Brad S. Kane

EXHIBIT 3

From: [Eric Clopper](#)
To: [Sarah Cohen](#)
Cc: [David Bibiyan](#); [Chris Cude](#); jeff@tomorrowlaw.com; [Rafael Yedoyan](#); [Nadia Rodriguez](#); thomavvxngroupllcetalz11731883@projects.filevine.com; [Wesley Gonzales](#); [Brad Kane](#)
Subject: RE: Thoma v. VXN et al, - Meet and Confer on Plaintiff's Second Amended Complaint
Date: Wednesday, March 6, 2024 4:00:27 PM

Hi Sarah,

I have sent out a Zoom invite for 10 am tomorrow (March 7th, 2024).

Please let me know if you need me to change the Zoom invite. Otherwise, Brad and I look forward to talking to you tomorrow at 10 am.

Best,

Eric

Eric Clopper
Senior Associate
Kane Law Firm
1154 S Crescent Heights Blvd.,
Los Angeles, CA 90035
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From: Sarah Cohen <sarah@tomorrowlaw.com>
Sent: Wednesday, March 6, 2024 3:31 PM
To: Brad Kane <bkane@kanelaw.la>
Cc: David Bibiyan <david@tomorrowlaw.com>; Eric Clopper <eclopper@kanelaw.la>; Chris Cude <ccude@kanelaw.la>; jeff@tomorrowlaw.com; Rafael Yedoyan <rafael@tomorrowlaw.com>; Nadia Rodriguez <nadia@tomorrowlaw.com>; thomavvxngroupllcetalz11731883@projects.filevine.com; Wesley Gonzales <wesley@tomorrowlaw.com>
Subject: Re: Thoma v. VXN et al, - Meet and Confer on Plaintiff's Second Amended Complaint

Good Afternoon Brad,

I have been getting up to speed since returning from vacation yesterday. Are you available for a call tomorrow? I am available between 10am-2pm.

Thank you.

On Tue, Mar 5, 2024 at 2:40 PM Brad Kane <bkane@kanelaw.la> wrote:

David,

Thank you for responding promptly on Sarah Cohen's behalf.

Scope of Change of Address

As an initial matter, it is noteworthy that Ms. Cohen continues to file documents in federal court while she is "out of the office and will be until the end of the week." [Dkt. 50]

More important, you avoided answering Eric Clopper's question:

Please advise if Sarah Cohen's change of address apply to all of Plaintiff's counsel?

Meet and Confer on Second Amended Complaint

Given Plaintiff's past filings based on inconsistent factual allegations and reliance on reversed case law to multiply the proceedings and drive-up litigation costs, my client still hopes to meet and confer with one of Plaintiff's counsel prior to the filing of the Second Amended Complaint ("SAC") to avoid unnecessary motion practice. Ms. Cohen's purported absence does not change the fact that both you and Jeffrey are also counsel of record for Plaintiff, and listed above Sarah on every pleading.

Please advise if all three of Plaintiff's counsel are unwilling to meet and confer prior to the filing of the SAC.

Mediation

Given the Court's comments that even assuming your client is an employee (a disputed fact) Wage Order 12 Governing the Motion Picture Industry likely controls. Mediation will not be productive until: (i) your client expressly recognizes that Wage Order 12 controls; or (ii) Defendants obtain summary judgment on that threshold issue.

I look forward to working with you.

Best,

Brad

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From: David Bibiyan <david@tomorrowlaw.com>

Sent: Monday, March 4, 2024 11:31 AM

To: Eric Clopper <eclopper@kanelaw.la>

Cc: Sarah Cohen <sarah@tomorrowlaw.com>; Brad Kane <bkane@kanelaw.la>; Chris Cude <ccude@kanelaw.la>; jeff@tomorrowlaw.com; Rafael Yedoyan <rafael@tomorrowlaw.com>

Subject: Re: Thoma v. VXN et al, - Meet and Confer on Plaintiff's Second Amended Complaint

Eric:

Sarah is out of the office and will be until the end of the week. She will respond to you at that time about the pleadings.

However, given your email purporting to want to work together, it's become abundantly clear that the litany of pleadings motions have resulted in the following revelation: this case is going to continue on a class and paga basis in a substantially similar form to when it was filed. Once discovery ramps up in earnest, the fees and costs will only intensify greatly, and the opportunity for an early class and paga resolution will dwindle.

Please advise if your client is interested in attending a mediation when these last details of the pleadings are resolved. If it is not, that is fine, but we'd like it notated for the record that our attempt at an early resolution, prior to the serious fees and costs that will be incurred in litigation, not to mention the incidental costs of discovery and litigation, which all should bear in mind.

Best regards.

David D. Bibiyan
Bibiyan Law Group, P.C.
8484 Wilshire Boulevard, Suite 500
Beverly Hills, California 90211
Telephone: 310-438-5555
Facsimile: 310-300-1705

david@tomorrowlaw.com

**** PLEASE NOTE THAT OUR ADDRESS HAS CHANGED:**

On Mon, Mar 4, 2024 at 11:24 AM Eric Clopper <eclopper@kanelaw.la> wrote:

Sarah,

I hope you and your father have been well.

Thank you for your Change of Address (Dkt. 50). Does this apply to all of Plaintiff's Counsel or just you? I want to make sure the POS is correct.

Equally important, Judge Hsu indicated we should work together as much as possible.

Are you available for a Zoom meet and confer this week regarding your client's second amended complaint? What date(s)/time(s) work best for you this week?

We would like to avoid the necessity of another 12(b)(6) motion.

Best,

Eric

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Kind regards,

Sarah Cohen, Esq.
Associate Attorney

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